



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 22 2015

Dave Buell

Sparks, NV 89441

RE: MUR 6771
Sue Lowden for US Senate and
Chris Marston in his official
capacity as treasurer

Dear Mr. Buell:

On December 17, 2015, the Federal Election Commission reviewed the allegations in your complaint dated January 6, 2014, and decided on the basis of the information provided in your complaint, and information provided by Sue Lowden for US Senate and Chris Marston in his official capacity as treasurer, to dismiss the allegation that Sue Lowden for US Senate and Chris Marston in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(8). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

Dave Buell
MUR 6771
Page 2

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Daniel A. Petalas
Acting General Counsel



BY: Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Sue Lowden for US Senate
6 and Chris Marston in his official capacity
7 as treasurer

MUR: 6771

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10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 alleging that Sue Lowden for US Senate ("Committee"), the authorized campaign committee for
13 2010 U.S. Senate candidate Sue Lowden, violated the Federal Election Campaign Act of 1971,
14 as amended (the "Act"), and Commission regulations by failing to report an approximately
15 \$78,000 debt owed to Vitale & Associates, LLC ("Vitale"), a Colorado-based polling and public-
16 affairs company. Compl. at 1 (Jan. 9, 2014). For the reasons explained below, the Commission
17 exercises its prosecutorial discretion and dismisses the matter. *See Heckler v. Chaney*, 470 U.S.
18 821 (1985).

19 **II. FACTUAL BACKGROUND**

20 During the 2010 election, the Committee used Vitale as a vendor. The Committee's 2010
21 April Quarterly Report disclosed payments to Vitale for "Survey Research" on February 10,
22 2010, and March 23, 2010, in the amounts of \$20,982.59 and \$21,330.94, respectively.¹ The
23 Committee's next two filed reports, the 2010 July and October Quarterly Reports, disclosed a
24 separate debt to Vitale in the amount of \$77,796.88, also for "Survey Research."² When the
25 Committee filed its 2010 Year End Report, it disclosed no debt to Vitale and no payments to
26 Vitale. Thereafter, none of the Committee's filings in 2011, 2012, and 2013 disclosed any debt

¹ See <http://docquery.fec.gov/pdf/180/10020293180/10020293180.pdf> at 330 and 344.

² See <http://docquery.fec.gov/pdf/441/10020544441/10020544441.pdf> at 204, and
<http://docquery.fec.gov/pdf/035/10020963035/10020963035.pdf> at 40.

1 owed to Vitale. On April 14, 2011 and May 3, 2012, respectively, the Committee amended its
2 2010 October and July Quarterly Reports to delete the debt to Vitale that it had disclosed on its
3 original reports.

4 Vitale filed a lawsuit against Lowden regarding the debt in the U.S. District Court for the
5 District of Nevada for breach of contract, alleging a failure to pay, on August 8, 2012.³ On
6 January 14, 2014, the Committee amended its 2010 July Quarterly Report and all subsequent
7 reports to include a \$77,796.88 debt with Vitale with the notation, “disputed debt—currently in
8 litigation in NV Federal Court.” The lawsuit was terminated on July 30, 2015, after the district
9 court entered summary judgment in Lowden’s favor.⁴

10 The administrative Complaint in this matter was filed on January 9, 2014. It alleges that
11 the Committee violated Commission regulations by omitting the Vitale debt from its disclosure
12 reports, beginning with its Amended 2010 July and October Quarterly Reports and continuing
13 with all subsequent reports. Compl. at 1-2.

14 The Committee argues that it has not violated the Act or Commission regulations and
15 requests that the Commission dismiss the matter. The Committee asserts that it did not enter into
16 either an express or implied contract for the performance of the polling services that Vitale
17 claims were provided. Resp. at 1-2. The Committee explains that given its belief that no
18 contract or agreement ever existed, it believed the alleged debt was not reportable to the
19 Commission as a “disputed debt” under 11 C.F.R. § 116.10. *Id.* Further, the Committee

³ See *Vitale & Assocs., LLC v. Lowden*, No. 2:12-cv-01400-JCM-VCF at ¶¶ 5-9 (D. Nev. Aug. 8, 2012) (Complaint) (“In connection with her primary campaign, Defendant, either directly or through an agent, entered into a contract for services with Plaintiff[;] [t]he amount owing to the Plaintiff by the Defendant is the sum of \$77,796.88.”).

⁴ See *id.* (D. Nev. July 30, 2015) (Order Granting Summary Judgment and Denying Motion for Attorney Fees and Costs).

1 explains that on January 14, 2014, it amended the 2010 July Quarterly Report and all subsequent
2 reports to reflect the \$77,796.88 Vitale invoice as a “disputed debt -- currently in litigation in NV
3 Federal Court,” and that it did so “out of an abundance of caution,” given that the lawsuit
4 “elevated the issue to a ‘bona fide disagreement’ that could fall within 11 C.F.R. § 116 *et seq.*”
5 *Id.* at 2-3. The Committee asserts that it amended its disclosure reports before it received
6 notification of the Complaint in this matter; the notification letter was mailed to the Committee
7 on January 14, 2014, the same day the Committee amended its reports.

8 The Committee’s Response also notes that its most recent filing at the time of the
9 Response — the 2014 April Quarterly Report — reflects a cash-on-hand balance of \$0. *Id.* at 3.
10 The Committee’s 2015 October Quarterly Report, its most recent report, also discloses \$0 cash
11 on hand.⁵ The Committee has been working with the Commission’s Reports Analysis Division
12 (“RAD”) to terminate.

13 III. LEGAL ANALYSIS

14 The Act and Commission regulations require political committees to continuously report
15 the amount and nature of their outstanding debts until those debts are extinguished. 52 U.S.C.
16 § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a). Further, where there is a “disputed debt,” the
17 political committee must report that disputed debt if the creditor has provided “something of
18 value” to the political committee. 11 C.F.R. § 116.10(a). A “disputed debt” is “an actual or
19 potential debt or obligation owed by a political committee, including an obligation arising from a
20 written contract, promise or agreement to make an expenditure, where there is a bona fide
21 disagreement between the creditor and the political committee as to the existence or amount of

⁵ <http://docquery.fec.gov/pdf/110/20151023020031110/20151023020031110.pdf>.

1 the obligation owed by the political committee.” *Id.* § 116.1(d). Until the dispute is resolved,
2 the political committee must disclose any amounts paid to the creditor, any amount the political
3 committee admits it owes, and the amount the creditor claims is owed. *Id.* § 116.10(a).

4 Here, even though the fact of Vitale’s lawsuit established the existence of a “bona fide
5 disagreement” over (and thus triggered a reporting obligation with respect to) the nearly \$78,000
6 at issue, the Commission concludes that this matter does not merit further use of Commission
7 resources. The Committee disclosed the alleged debt at the time it was incurred and amended all
8 of its disclosure reports to reflect the disputed debt before receiving the administrative
9 Complaint. Furthermore, the Committee, having no cash-on-hand, is essentially defunct and
10 intends to terminate. Under the circumstances, the Commission exercises its prosecutorial
11 discretion and dismisses the allegations. *Heckler*, 470 U.S. at 831.